

MINUTES OF THE REGULAR MEETING OF **July 24, 2024**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **July 24, 2024**, in the County Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Holly Wingate, Mr. Bruce Mears, Mr. Brian Butler, and Mr. Scott Collins. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Michael Lowrey – Planner III, Ms. Ann Lepore – Planner I and Ms. Jessica Iarussi – Recording Secretary.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to approve the Agenda as REVISED. Motion carried 5 – 0.

PUBLIC COMMENT

The Commission found that no one was present who wished to provide public comment.

OTHER BUSINESS

S-24-08 Williamsville Country Village

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the use of property for the construction of a 4,860 square foot liquor store building and other site improvements. The Preliminary Site Plan was approved by the Planning and Zoning Commission at their meeting of Wednesday, April 24, 2024. The property is located on the north side of Lighthouse Road (Route 54). The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: C-1 (General Commercial District) and C-2 (Medium Commercial District). Tax Parcels: 533-18.00-28.00 & 28.01. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to Approve the Revised Preliminary Site Plan with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

S-20-24 Hocker's Super Center Phase 2

Preliminary Site Plan and request for modification to required parking, reduced cartway width & loading space.

This is a Preliminary Site Plan and associated waiver requests for Hockers Supercenter proposing improvements to the existing shopping center which is currently comprised of an existing (62,000 SQ FT) commercial grocery store, a (3,911 SQ FT) commercial car wash and ancillary improvements. The Plan proposes to consolidate the Parcels and add additional improvements including a (4,800 SQ FT) retail expansion of the grocery structure, a (3,070 SQ FT) expansion of the existing car wash, a (3,696 SQ FT) fast food restaurant with a drive-thru, an additional

ingress/egress connecting on Route 26 for a total of (77,477 SQ FT) on Parcels comprised of a total of (12.0437) acres +/- . The Plan includes a request for a reduction in the parking as required under (§115-77.1 *Large-scale uses*), related to the required 20% increase in (§115-77.1(D)(2)). Subsequently, the Preliminary Plan does not include the number of parking stalls or design required under the *Large-Scale Use* provisions of (§115-77.1(D)(2)). The Plan also includes a second waiver request (§99-18E(1)(a)) seeking a reduction in the road width of (24) feet adjacent to the drive-thru on the “Fast Food” pad site under (§99-18E(1)(a)) & (§99-18(J)). Lastly, the Plan includes a third waiver request for the requirement for an off-street loading space for commercial sites (§115-167). The Plan includes the proposed commercial improvements, parking, internal circulation roads, stormwater management, and other site improvements located on five (5) Parcels comprised of a total of (12.0437) acres +/- . The properties are located on the southeast corner of the intersection of Atlantic Avenue (Route 26) and Roxana Road (Route 17). Tax Parcels: 134-12.00-330.01, 331.00, 332.00, 333.00, & 334.00. Staff are awaiting agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to Approve the Preliminary Site Plan with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

S-24-28 The Vineyards at Nassau Valley Phase 5

Preliminary Site Plan

This is a Preliminary Site Plan for The Vineyards at Nassau Valley Phase 5 for the construction of approximately five (5) 4-story apartment buildings containing 32 units each and two (2) 4-story apartment buildings containing 36 units (for a total of 232 units to be included within Phase 5.) The proposed Building Numbers for Phase 5 are Buildings 2, 6, 8, 9, 10, 11 and 37. The property is located within the existing Vineyards at Nassau Valley development, which consists of a total of 966 proposed residential units and 76,229 square feet of commercial uses. Staff notes that the property is located within the Henlopen Transportation Improvement District (TID) and therefore will be subject to payment of any related TID fees as required by DelDOT and as outlined in any TID Agreement. Staff further note that a copy of the latest approved Master Plan (approved by the Commission at their Meeting of Tuesday, October 1st, 2019,) has been included in the Commission’s Paperless Packet this afternoon and the Applicant has noted that there are no proposed changes to the Master Plan at this time. The property is located on the north side of Route 9 (Lewes/Georgetown Highway), approximately 0.66 mile west of Route 1 (Coastal Highway). The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: C-1 (General Commercial District). Tax Parcels: 334-5.00-152.00 & 152.06. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to Approve the Preliminary Site Plan with final approval be made subject to staff upon the receipt of all agency approvals and an updated Master Plan. Motion carried 5-0.

S-24-40 Irons Lane Verizon Wireless Cell Tower

Preliminary Site Plan

This is a Preliminary Site Plan for the construction and establishment of a 174-ft telecommunications tower, fencing, and other related site improvements. Staff note that the project is subject to the provisions of §115-194.2(A) of the Code which requires the submittal of a Special Use Exception to the Board of Adjustment. The Site was the subject of a previous Application for a Special Use Exception (BOA Case No. 12902) and a variance of 24-ft from the 150-ft height limitation established for telecommunications towers under §115-179(A) of the Code, which was approved by the Board of Adjustment at their meeting of Monday, February 5th, 2024. The property is located at 30240 Irons Lane and is lying on the west side of Irons Lane (S.C.R. 348) and the south side of a private road known as “Jen and Jac” Road in Dagsboro, Delaware. The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 134-7.00-127.00. Staff are in receipt of all agency approvals; therefore, this request is eligible for both preliminary and final approval.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to Approve the Preliminary & Final Site Plan. Motion carried 5-0.

S-24-44 Central Turf & Irrigation Supply

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a 6,800 square foot building for the use as a warehouse and other existing site improvements. Staff note that the property was also the site of a previous Conditional Use Application (Conditional Use No. 1610) for a produce and garden center. The Application was approved by the Sussex County Council at their meeting of Tuesday, June 14th, 2005, and the change was adopted through Ordinance No. 1780. The property is located on the northwest side of the intersection of Iron Hill Road (S.C.R. 454A) and Old Stage Road (S.C.R. 68). The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: AR-1 (Agricultural Residential District) & C-3 (Heavy Residential District). Tax Parcel: 532-14.00-6.05. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to Approve the Preliminary Site Plan with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

2018-22 Citation Meadows

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for Citation Meadows, a cluster subdivision consisting of forty-nine (49) single-family lots, private roads, stormwater management and open space to be located on a 54.50-acre parcel of land. The Final Subdivision Plan for the proposal was approved by the Planning and Zoning Commission at their Meeting of Thursday, May 13th, 2021. Specifically, this request is for the establishment of a proposed 400 square foot pavilion, 6,913 square foot tot lot area, walking path, 6.10-acre community orchard/garden and other site improvements. The property is located on the north side of Wild Flower Drive within the existing and previously approved Citation Meadows Subdivision and is lying on the north side of Phillips Hill Road (S.C.R. 472), approximately 0.42 mile west of Lakeview Road (S.C.R. 412). The

Preliminary Amenities Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District) Tax Parcel: p/o 133-19.00-30.00. Staff are in receipt of all agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to Approve the Preliminary Amenities Plan as a preliminary with final approval to be by the staff, in receipt of all other agency approvals. Motion carried 5-0.

S-24-30 Budget Mini Storage

Request for Clarification as to Code Applicability (§115-194.1- CHCOZ)

This is a request for clarification of (§115-194.1C (3)) relating to the requirement to provide a “*FORESTED AND/OR LANDSCAPED BUFFER STRIP*” as part of the Planning & Zoning Department’s review of a Preliminary Site Plan submission. The Preliminary Site Plan includes an expansion of the existing (14,400 SQ FT) of commercial storage facility with the addition of (57,000 SQ FT) onto the unimproved neighboring Parcel for a total of (71,400 SQ FT) of commercial storage. The Applicant is requesting clarification on the requirement to provide a “*FORESTED AND/OR LANDSCAPED BUFFER STRIP*” (§99-5 Definitions) along the frontage of Parcel #58.09. The plantings are required under the Combined Highway Corridor Overlay Zone – CHCOZ and the Applicant is requesting exemption as an “existing business” under (§115-194.1C(3)(a)). Staff note that variances relating to requirements within the CHCOZ are required to be considered by the Board of Adjustment per (§115-194.1A). Tax Parcels: 530-10.00-58.08 & 530-10.00-58.09.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to DENY the Code Clarification as the requested exemption does not apply (Applicant will require a Variance from BOA). Motion carried 5-0.

Lands of Horace K. Jackson, Sr.

Minor Subdivision Plan off of an existing 50-ft. easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off an existing 50-ft wide ingress/egress access easement. Proposed Lot 4 will consist of 1.0-acre +/-, and the residual land will contain 70.43 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the north side of Indian Mission Road (Route 5). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-23.00-1.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 50-ft Easement with final approval to be by the staff, in receipt of all other agency approvals and an updated maintenance agreement. Motion carried 5-0.

Lands of Marvin H. & Donna M. Kohn

Minor Subdivision Plan off of a proposed 50-ft. easement

This is a Minor Subdivision Plan for the creation of two (2) lot plus the residual lands with access off a proposed 50-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.239 acres +/-, proposed Lot 2 will consist of 0.922 acre +/-, and the residual lands will contain 11.222 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the west side of German Road (S.C.R. 524). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 231-13.00-139.04. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals; therefore, this request is eligible for final approval.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 50-ft Easement. Motion carried 5-0.

Lands of Herholdt Properties, LLC

Minor Subdivision Plan off of a proposed 30-ft. easement

This is a Minor Subdivision Plan for the creation of three (3) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 26.00-acres +/-, proposed Lot 2 will consist of 23.13-acres +/-, Proposed Lot 3 will consist of 33.70-acres +/-, and the residual lands (Lot 4) will contain 1.09-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located off Benson Road (S.C.R. 216) by a proposed 30-foot ingress/egress access easement over the cross-access easement created per Plot Book 218 Page 57. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 230-14.00-69.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft Easement with final approval to be by the staff, in receipt of all other agency approvals. Motion carried 5-0.

Lands of Melson Funeral Services, LTD

Minor Subdivision Plan off of an existing 30-ft. easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus the residual lands with access off an existing 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.462-acres +/-, proposed Lot 2 will consist of 1.138-acres +/-, Proposed Lot 3 will consist of 1.138-acres +/-, proposed Lot 4 will contain 1.433-acres +/-, and the residual lands will contain 5.373-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located on the east side of Parker House Road (S.C.R. 362) and the west side of Muddy Neck Road (S.C.R. 361). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 134-17.00-17.00. Zoning: B-1 (Neighborhood Business District). Staff note that residential uses are not permitted in the B-1 Zoning District and that the Applicant intends to apply for downzoning prior to the issuance of any building permits to comply with this requirement. Staff are awaiting agency approvals. Should the Commission desire

to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft Easement with final approval to be by the staff, in receipt of all other agency approvals. Motion carried 5-0.

OLD BUSINESS

C/U 2416 Over the Hill Holdings, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN INDOOR AND OUTDOOR SHOOTING/ARCHERY RANGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GUMBORO HUNDRED, SUSSEX COUNTY, CONTAINING 10.55 ACRES MORE OR LESS. The property is lying on the northeast corner of the intersection of Parker Road (S.C.R. 415) and Line Road (S.C.R. 419). 911 Address: 38531 Parker Road, Millsboro. Tax Map Parcel: 333-15.00-20.00.

The Commission discussed this application which has been deferred since June 26, 2024.

Mr. Robertson read Mr. Mears' prepared motion per Mr. Mears' request.

Mr. Mears moved that the Commission recommend a **PARTIAL APPROVAL**, and a **PARTIAL DENIAL** of **C/U 2416 OVER THE HILL HOLDINGS, LLC** for an indoor and outdoor shooting/archery range. Specifically, this motion is to approve the conditional use for the indoor shooting range and deny the conditional use for the outdoor shooting range based upon the record made during the public hearing and for the following reasons:

1. The use as an indoor shooting range was approved in 2018 as Case No. 12083 by the Sussex County Board of Adjustment. I have no objection to the continued use of the indoor shooting range under that approval. Also, Sussex County certainly respects the need for firearm practice and training by our residents and law enforcement agencies. However, this Application is a zoning issue, and the fundamental question is whether this is an appropriate location for this type of use – in this case particularly the outdoor shooting range. I do not believe that this is the most appropriate location for this proposed use as an outdoor shooting range.
2. During the Board of Adjustment hearing on Case No. 12083 for an indoor range, the Applicant specifically stated that they were not seeking approval for an outdoor shooting range, and that "The Environmental Protection Agency discourages the practice of commercial outdoor firing ranges." After the Board of Adjustment approved the indoor range, the Applicant sought approval of a change in zone for the property. That change in zone did not occur. Despite the Applicant's knowledge and involvement with Sussex County's land use process, and despite the Applicant's contrary statements to the Board of Adjustment that it was not seeking an outdoor shooting range, an outdoor shooting range was nevertheless constructed on the property without any zoning permits or approvals for the use.

3. There are homes in close proximity to the site. There was opposition testimony from one of the owners of a home adjacent to this site that the outdoor range would be noisy and would interfere with her quiet enjoyment of her property. I believe these concerns are legitimate and apply equally to all of the houses that are adjacent to, or near this property. I also believe that it is reasonable to conclude that the outdoor shooting range and noise generated by it will adversely affect the values and marketability of the nearby residential properties.
4. Although the Applicant provided evidence suggesting that the noise generated by the outdoor shooting range will be minimal, I am not satisfied that this evidence accurately reflects how the outdoor range will be used. The noise testimony was based upon the discharge of a single firearm. However, from the photographs in the record it appears that there will be 8 shooting positions or stalls allowing at least 8 firearms to be discharged simultaneously or in rapid succession. As a result, the actual noise will be much louder and more prolonged than the single firearm that was tested and presented as noise evidence by the Applicant.
5. I am not satisfied that the outdoor range and particularly the down-range portion of it has been constructed in a way that mitigates the noise generated by the outdoor use to the fullest extent possible. It may be possible that the Applicant can provide additional protections against the noise disturbance from this facility on the neighboring properties during the County Council hearing. But I am not satisfied that the evidence presented to the Commission sufficiently addresses this concern.
6. While there is definitely a need for indoor and outdoor shooting ranges in Sussex County, particularly so that law enforcement and police agencies can use them for training, there are other more appropriate locations for them that are not so close to existing homes.
7. It is unfortunate that the Applicant constructed the outdoor shooting range without the appropriate approvals for the use. They did so contrary to their own statements that such a range would not be built. They constructed the range at their own peril, without approvals, and with the risk that the use would not be approved. As a result, the existence of the outdoor range cannot be used in support of the conditional use.
8. For all of these reasons and based on the record before the Commission which may be supplemented during the Council hearing, I move that the Commission recommend a denial of the outdoor shooting range portion of this Conditional Use.
9. The indoor shooting range was approved by the Board of Adjustment as a special exception in Case No. 12083 decided in 2018. It is appropriate to confirm the indoor shooting range through this conditional use, and the indoor shooting range shall be permitted to include sales of guns, rifles and equipment in a manner that is accessory to the primary use as an indoor shooting range.
10. The indoor shooting range is entirely self-contained with noise-deadening and safety features built into it. There is no evidence that the indoor shooting range will adversely affect neighboring properties or roadways.
11. The indoor shooting range provides a needed venue for shooting and target practice for residents of Sussex County, law enforcement agencies and police departments. As a result, it has a public or semi-public character.
12. This recommendation for approval of only the indoor shooting range is subject to the following conditions:

- A. The permitted use shall only include the indoor shooting range. This may include limited retail sales including sales of guns, rifles, ammunition and equipment in a manner that is accessory to the primary use as an indoor shooting range.
- B. The Applicant must comply with all Federal and State licenses and regulations for the use, including compliance with all federal and state requirements for the recovery and disposal of used ammunition.
- C. The use of the indoor range facilities shall occur between the hours of 8:00 am and 10:00 pm.
- D. All dumpsters shall be screened from the view of neighboring properties and roadways. The dumpster locations shall be shown on the Final Site Plan.
- E. Parking shall be prohibited on any area roadways. All on-site parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.
- F. All lighting shall be downward screened so that it does not shine onto neighboring properties or roadways.
- G. One lighted sign, no larger than 32 square feet in size, shall be permitted.
- H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins to recommend partial approval and partial denial of **C/U 2416 OVER THE HILL HOLDINGS, LLC** for the reasons and the conditions stated in the motion. Motion carried 3-2 by roll call vote.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – no, Mr. Collins – yea, Mr. Butler – no, Chairman Wheatley - yea

C/U 2429 Jason Hignutt

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 0.69 ACRE, MORE OR LESS. The property is lying on the west side of Camp Road (S.C.R. 532), approximately 0.19 mile north of Eskridge Road (S.C.R. 531). 911 Address: 20914 Camp Road, Bridgeville. Tax Map Parcel: 331-2.00-17.02.

The Commission discussed this application which has been deferred since July 10, 2024.

Mr. Robertson read Mr. Butler's prepared motion per Mr. Butler's request.

Mr. Butler moved that the Commission recommend approval of **C/U 2429 JASON HIGNUTT** for a landscaping business based on the record made during the public hearing and for the following reasons:

- 1. The property is located on a small parcel of land, but the Applicant proposes a small landscaping business that will fit the location. As the business hopefully grows, another larger location may become necessary in the future.
- 2. The site is located within the Developing Area according to the Sussex County Comprehensive Plan. This low impact type of use is appropriate within this Area.

3. The property is zoned AR-1 Agricultural Residential. The use of the property as a landscaping business is consistent with the underlying agricultural zoning of the property.
4. The use will not adversely affect area roadways or neighboring properties.
5. A landscaping company provides a service to a wide variety of Sussex County residents and businesses, and it has a public or semi-public character that will benefit the residents and businesses of Sussex County.
6. There was no opposition to this application.
7. This recommendation is subject to the following conditions:
 - A. This use shall be limited to a landscaping business that performs off-site landscaping work.
 - B. No manufacturing shall occur on the site. This prohibition includes the shredding or grinding of any materials and also includes the dyeing of mulch or similar materials.
 - C. As stated by the Applicant, there shall not be any retail sales occurring from the site, and no materials such as dirt, topsoil, mulch, stone or compost shall be stored on the site.
 - D. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - E. The hours of operation shall be limited to 7:00 am through 7:00 pm, Monday through Saturday. There shall not be any Sunday hours. The Applicant shall be able to operate beyond these hours on an as - needed basis for limited situations such as snow removal, storm damage cleanup, and similar events.
 - F. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
 - G. Since this property also includes the Applicant's residence, the Final Site Plan shall show the area where this landscaping business will be located on the property.
 - H. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. No more than 6 vehicles associated with the use shall be parked on the site. There shall not be any parking or storage within the property's setbacks.
 - I. Because this Application was filed as a result of a Constable's Violation, the Final Site Plan must be submitted within 6 months of approval of this Ordinance by County Council. Otherwise, the violation process shall continue with respect to the Applicant and this property.
 - J. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
 - K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of **C/U 2429 JASON HIGNUTT** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

C/U 2432 Simon Fares & Lorne Crawford

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BEAUTY SALON TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.56 ACRE, MORE OR LESS. The property is lying on the east side of Old Landing Road (S.C.R. 274), approximately 0.28 mile south of Warrington Road (S.C.R. 275). 911 Address: 19747 Old Landing Road, Rehoboth Beach. Tax Map Parcel: 334-12.00-181.03.

The Commission discussed this application which has been deferred since July 10, 2024.

Mr. Collins moved that the Commission recommend approval of **C/U 2432 SIMON FARES AND LORNE CRAWFORD** for a beauty salon business based on the record made during the public hearing and for the following reasons:

1. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. This use is appropriate within this Area.
2. The property is zoned AR-1 Agricultural Residential. The use of the property as a home-based salon business is consistent with the mix of other businesses in the area, of note are a Bed and Breakfast, a Boutique Hotel, two Landscaping businesses, and a storage facility within close proximity to the site.
3. The use will not adversely affect area roadways or neighboring properties with the conditions imposed with this CU.
4. A Beauty Salon provides a service to a wide variety of Sussex County residents and businesses, and it has a public or semi-public character that will benefit the residents and businesses of Sussex County. In particular, it would be convenient to area residents who prefer to not travel Rt. 1 to reach a local salon.
5. There was a mix of support and opposition to the proposal, with supporters noting the benefits to locals who may prefer to avoid the highway, general support of small businesses, specific support for the owner's based on prior experiences with their business in Pennsylvania. Several neighboring property owners noted concerns about reduction of enjoyment of their properties due to customer or employee headlights shining into their properties and concerns about the traffic conditions on Old Landing Road and safety issues that might be worsened by adding this home-based business to the area. These concerns can be mitigated with appropriate conditions.
6. This recommendation is subject to the following conditions:
 - A. This use shall be limited to a Beauty salon business.
 - B. There shall be not more than two stylist stations with two accompanying washing and two drying stations. The Final Site Plan shall depict the area of the existing structure set aside for the business use and this floorplan shall show the locations of the two sets of stations.
 - C. As stated by the Applicant, there shall only be retail sales occurring from the site that coincide with scheduled appointments of clients, not general retailing.
 - D. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - E. The hours of operation shall be limited to 8:00 am through 6:00 pm, Monday through Friday, and from 8:00 am until 6:00 pm on Saturdays. There shall not be any Sunday hours.

- F. There shall be a vegetative screen and/or Privacy Fence erected by the applicant on the back and South side of the property to reduce impact of customer and employee headlights on neighboring residents. The location and type of vegetation and fencing shall be shown on the Final Site Plan.
- G. Any lighting on the site shall be screened so that it does not shine on neighboring properties or roadways.
- H. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
- I. The Final Site Plan shall clearly show all areas for employee and customer vehicle parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.
- J. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
- K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to recommend approval of **C/U 2432 SIMON FARES AND LORNE CRAWFORD** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

2023-14 Northstar Property, LLC

A Coastal Area cluster subdivision to divide 379.042 acres +/- into 758 single-family lots to be located on a certain parcel of land containing 433.071 acres as recently surveyed or 419.64 acres as scaled and shown on the Sussex County Tax Map lying and being in Lewes and Rehoboth Hundred, Sussex County. The property is lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). 911 Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o). Zoning: MR (Medium Density Residential).

The Commission discussed this application which has been deferred since July 17, 2024.

The Commission discussed the following points in reference to the application:

1. The design and configuration of the proposed “open space” and how it appears to be fragmented in the current plans. Mr. Whitehouse noted that the open space areas were large enough to enable them to be re-configured. For example, lots 221-226 could be reconfigured, along with Road, B, Road, C and Road E to achieve a contiguous and less fragmented open space.
2. How the open space is proposed to be maintained; that some areas may be proposed to be meadows that would not be mowed; that it is important that these areas be clarified so that property owners know which areas are to be left to grow as meadows.
3. Phasing and the time frame for the construction of Mulberry Knoll Road. and the ability to

hold the developer accountable for maintaining said time frames within any potential conditions of approval. Mr. Roberston confirmed that he had reviewed the master agreement for TIDs between the County and DelDOT and that there is no prohibition against the imposition of conditions of approval relating to construction phasing in developments that were proceeding forward with a TID.

4. The Commission discussed the implementation and enforcement of any potential conditions and the potential penalties for any potential non-compliance.
5. The Commission discussed the potential mechanisms for the potential tracking of affordable housing and keeping the units affordable, and asked about the penalties and enforcement mechanisms to ensure that affordable units continue to remain affordable.
6. The phasing of the development and whether the developer could be required to complete the affordable housing portions first.
7. The Commission discussed the overall integration of units within the proposed community as a whole, and inter-connectivity. Concerns were raised that some aspects of the community may be physically and/or functionally separate from some of the amenities. For example, would occupiers of the multi-family units be able to access HOA amenities.
8. That any Final site plan needs to be clear and precise to provide buyers predictability on what is intended for development.

Ms. Wingate moved that the Commission reopen the record for Subdivision 2023-14, CZ 2026, CU 2499, and CZ 2025, all regarding Northstar Property, LLC, for the limited purpose of officially notifying the Cape Henlopen School District about these four applications and to receive any official written comment that the district may have concerning the applications. The record shall be held open until the close of business on August 20th, 2024, for official written comment from the district on the applications. Then the record shall remain open until the close of business on September 4th, 2024, for written comment only from the applicant and the public and limited solely to comments received from the district with respect to the applications.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to reopen the record for the limited purpose on **2023-14 NORTHSTAR PROPERTY, LLC** for the reasons stated. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

C/U 2499 Northstar Property, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR - MEDIUM DENSITY RESIDENTIAL DISTRICT TO ALLOW FOR MULTI-FAMILY DWELLINGS (94 UNITS) TO BE LOCATED ON A 7.882 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS. The property is lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). 911 Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o).

The Commission discussed this application which has been deferred since July 17, 2024.

The Commission discussed the following points in reference to the application:

1. The design and configuration of the proposed “open space” and how it appears to be fragmented in the current plans. Mr. Whitehouse noted that the open space areas were large enough to enable them to be re-configured. For example, lots 221-226 could be reconfigured, along with Road, B, Road, C and Road E to achieve a contiguous and less fragmented open space.
2. How the open space is proposed to be maintained; that some areas may be proposed to be meadows that would not be mowed; that it is important that these areas be clarified so that property owners know which areas are to be left to grow as meadows.
3. Phasing and the time frame for the construction of Mulberry Knoll Road. and the ability to hold the developer accountable for maintaining said time frames within any potential conditions of approval. Mr. Roberston confirmed that he had reviewed the master agreement for TIDs between the County and DelDOT and that there is no prohibition against the imposition of conditions of approval relating to construction phasing in developments that were proceeding forward with a TID.
4. The Commission discussed the implementation and enforcement of any potential conditions and the potential penalties for any potential non-compliance.
5. The Commission discussed the potential mechanisms for the potential tracking of affordable housing and keeping the units affordable, and asked about the penalties and enforcement mechanisms to ensure that affordable units continue to remain affordable.
6. The phasing of the development and whether the developer could be required to complete the affordable housing portions first.
7. The Commission discussed the overall integration of units within the proposed community as a whole, and inter-connectivity. Concerns were raised that some aspects of the community may be physically and/or functionally separate from some of the amenities. For example, would occupiers of the multi-family units be able to access HOA amenities.
8. That any Final site plan needs to be clear and precise to provide buyers predictability on what is intended for development.

Ms. Wingate moved that the Commission reopen the record for Subdivision 2023-14, CZ 2026, CU 2499, and CZ 2025, all regarding Northstar Property, LLC, for the limited purpose of officially notifying the Cape Henlopen School District about these four applications and to receive any official written comment that the district may have concerning the applications. The record shall be held open until the close of business on August 20th, 2024, for official written comment from the district on the applications. Then the record shall remain open until the close of business on September 4th, 2024, for written comment only from the applicant and the public and limited solely to comments received from the district with respect to the applications.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to reopen the record for the limited purpose on **C/U 2499 NORTHSTAR PROPERTY, LLC** for the reasons stated. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

C/Z 2025 Northstar Property, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A 12.696-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.07 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS. The property is lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o).

The Commission discussed this application which has been deferred since July 17, 2024.

The Commission discussed the following points in reference to the application:

1. The design and configuration of the proposed “open space” and how it appears to be fragmented in the current plans. Mr. Whitehouse noted that the open space areas were large enough to enable them to be re-configured. For example, lots 221-226 could be reconfigured, along with Road, B, Road, C and Road E to achieve a contiguous and less fragmented open space.
2. How the open space is proposed to be maintained; that some areas may be proposed to be meadows that would not be mowed; that it is important that these areas be clarified so that property owners know which areas are to be left to grow as meadows.
3. Phasing and the time frame for the construction of Mulberry Knoll Road. and the ability to hold the developer accountable for maintaining said time frames within any potential conditions of approval. Mr. Roberston confirmed that he had reviewed the master agreement for TIDs between the County and DelDOT and that there is no prohibition against the imposition of conditions of approval relating to construction phasing in developments that were proceeding forward with a TID.
4. The Commission discussed the implementation and enforcement of any potential conditions and the potential penalties for any potential non-compliance.
5. The Commission discussed the potential mechanisms for the potential tracking of affordable housing and keeping the units affordable, and asked about the penalties and enforcement mechanisms to ensure that affordable units continue to remain affordable.
6. The phasing of the development and whether the developer could be required to complete the affordable housing portions first.
7. The Commission discussed the overall integration of units within the proposed community as a whole, and inter-connectivity. Concerns were raised that some aspects of the community may be physically and/or functionally separate from some of the amenities. For example, would occupiers of the multi-family units be able to access HOA amenities.
8. That any Final site plan needs to be clear and precise to provide buyers predictability on what is intended for development.

Ms. Wingate moved that the Commission reopen the record for Subdivision 2023-14, CZ 2026, CU 2499, and CZ 2025, all regarding Northstar Property, LLC, for the limited purpose of officially notifying the Cape Henlopen School District about these four applications and to receive any official written comment that the district may have concerning the applications. The record shall be held open until the close of business on August 20th, 2024, for official written comment from the district on the applications. Then the record shall remain open until the close of business on September 4th, 2024, for written comment only from the applicant and the public and limited solely to comments received from the district with respect to the applications.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to reopen the record for the limited purpose on **C/Z 2025 NORTHSTAR PROPERTY, LLC** for the reasons stated. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

C/Z 2026 Northstar Property, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A 7.882-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS. The property is and lying on the southeast side of Lewes-Georgetown Highway (Rt. 9), and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o).

The Commission discussed this application which has been deferred since July 17, 2024.

The Commission discussed the following points in reference to the application:

1. The design and configuration of the proposed “open space” and how it appears to be fragmented in the current plans. Mr. Whitehouse noted that the open space areas were large enough to enable them to be re-configured. For example, lots 221-226 could be reconfigured, along with Road, B, Road, C and Road E to achieve a contiguous and less fragmented open space.
2. How the open space is proposed to be maintained; that some areas may be proposed to be meadows that would not be mowed; that it is important that these areas be clarified so that property owners know which areas are to be left to grow as meadows.
3. Phasing and the time frame for the construction of Mulberry Knoll Road. and the ability to hold the developer accountable for maintaining said time frames within any potential conditions of approval. Mr. Roberston confirmed that he had reviewed the master agreement for TIDs between the County and DelDOT and that there is no prohibition against the imposition of conditions of approval relating to construction phasing in

developments that were proceeding forward with a TID.

4. The Commission discussed the implementation and enforcement of any potential conditions and the potential penalties for any potential non-compliance.
5. The Commission discussed the potential mechanisms for the potential tracking of affordable housing and keeping the units affordable, and asked about the penalties and enforcement mechanisms to ensure that affordable units continue to remain affordable.
6. The phasing of the development and whether the developer could be required to complete the affordable housing portions first.
7. The Commission discussed the overall integration of units within the proposed community as a whole, and inter-connectivity. Concerns were raised that some aspects of the community may be physically and/or functionally separate from some of the amenities. For example, would occupiers of the multi-family units be able to access HOA amenities.
8. That any Final site plan needs to be clear and precise to provide buyers predictability on what is intended for development.

Ms. Wingate moved that the Commission reopen the record for Subdivision 2023-14, CZ 2026, CU 2499, and CZ 2025, all regarding Northstar Property, LLC, for the limited purpose of officially notifying the Cape Henlopen School District about these four applications and to receive any official written comment that the district may have concerning the applications. The record shall be held open until the close of business on August 20th, 2024, for official written comment from the district on the applications. Then the record shall remain open until the close of business on September 4th, 2024, for written comment only from the applicant and the public and limited solely to comments received from the district with respect to the applications.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to reopen the record for the limited purpose on **C/Z 2026 NORTHSTAR PROPERTY, LLC** for the reasons stated. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

PUBLIC HEARINGS

Mr. Robertson described the procedures for public hearings before the Planning and Zoning Commission.

Chairman Wheatley informed the public that the applicant for C/U 2440 and C/Z 2009 are the same and therefore they will present one case for both applications.

C/U 2440 Double H Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (108 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 37.52 ACRES, MORE OR LESS. The property is lying on the southeast side of Lighthouse Road (Rt. 54) approximately

0.50-mile northeast of Williamsville Road (S.C.R. 395). 911 Address: 35090 Lighthouse Road, Selbyville. Tax Map Parcel: 533-19.00-47.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant's conceptual rezoning plan, a copy of the applicants exhibit booklet, a copy of the applicant's environmental assessments and public facilities evaluation report, a copy of the proposed restrictive covenants for the property, a copy of the memo relating to drainage assessments, a copy of the staff analysis, a copy of the plus comments, a copy of the applicant's response to the plus comments from the State Planning Office, a copy of the DelDOT SLER, we have comments from the Technical Advisory Committee, including comments from the division of Watershed Stewardship, a copy of a letter from the US Department of Agriculture, a copy of the letter received from the Sussex County Engineering Department, a copy of a letter received from the Delaware Forest Service, comments from Delaware Electric Co-op and Delmarva Power and there are 7 comments.

Mr. David Hutt. Esq., spoke on behalf of the applicant in relation to the property totals 37.5 acres and as was indicated, are two applications, a change of zone application seeking to change the designation of that property on the county zoning map from agricultural residential district to the medium density residential district and the second application is a multifamily conditional use application and that seeks to have 108 single family homes in a multifamily use, which is a condominium style single family home project; that the 2020 state strategies maps that are promulgated by the Office of State Planning Coordination has the property centered on the image and is primarily within a Level 3 area; that the Office of State Planning Coordination says that development and growth may be appropriate in the near term in a Level 3 area; that the resources on the site and in the surrounding area should be carefully considered and accommodated; that there are public water and public sewer available and this area has developed and it is continuing to develop; that this is an appropriate area under the state strategies, but the Planning Commission often looks to 2045 future land use map that's contained within the 2018 update to the Sussex County Comprehensive Plan; that the comprehensive plan states that coastal areas are areas that can accommodate development provided special environmental concerns are addressed, a range of housing types should be permitted in coastal areas, including single family homes, this application certainly would meet that stated permitted purpose; that there is a wide range of various zoning classifications that exist along this area of Route 54; that in addition to all those various zoning classifications, the Counties Staff Memo identified 29 conditional uses within a one mile radius of this site.

Mr. Cliff Mumford an engineer with Davis, Bowen & Friedel spoke on behalf of the applicant that the property has frontage along Lighthouse Road to the north, Route 54, the majority of the Eastern property line is defined by the. Drum Creek Prong 4 tap Stitch, after the ditch turns, the property line continues to the center of the Drum Creek tax ditch; that this ditch defines the southern property boundary along with Americana Bayside; that the western boundary follows the edge of the woods line and runs adjacent with Americana Bayside Melson and there is a right away with Lighthouse Road that completes the loop around the property boundary; that there are approximately 8.259 acres of existing woods with the hatched area inside the woods that are the wetlands that were delineated by Tom Noble; that those wetlands are not classified as resources as

defined by Sussex County Code because they are not contiguous to tidal waters or wetlands, and they do not include a surface water connection to adjacent wetlands; that there's some AG ditches that run across the property to the main Prong 4 tax ditch, but there's no pipe connection or ditch connection; that there's a farm route that runs along here that separates the wetlands from the tax ditch; that the property is impacted by two generic tax ditches, Perch Creek Maine and Perch Creek Prong 4, Perch Creek Main runs with Americana Bayside includes at 80 foot right from the top of bank of the ditch, Perch Creek Main will not be impacted by this development; that Perch Creek Prong 4 runs from Lighthouse Rd. down the eastern boundary line with the Toll Brothers property, roughly 12,150 feet and then turns and cuts through the property; that as part of the development we plan to realign Prong 4 to run parallel with that boundary line with the Toll Brothers until it connects with Perch Creek Main, near the southeastern property corner; that the center line of the ditch will be offset from our property line to not impact the neighboring property and would be wholly contained on our site along with the tax ditch right of way; that a court order change will be required to be filed with DNREC to relocate the tax ditch; that the proposed neighborhood will have an entrance on Lighthouse Rd. (Route 54), which is classified as a major collector by DelDOT; that Lighthouse Rd. includes 12 foot travel lanes and eight foot shoulders, which meets DelDOT standards for a major collector; that the entrance has been sighted to align with New Road which intersects Lighthouse Road from the North; that left and right turn lanes will be provided into the site along with a left turn lane onto New Road based on DelDOT's requirements; that regarding our due diligence with DelDOT, we have submitted an SLER to which they responded that the development site traffic would have a minor impact on area roadways and the project is eligible to pay an area wide study fee in lieu of performing a TIS; that at the entrance, a 10 foot wide shared use path will be along the property frontage; that the closest house will be 70 feet from the right of way of Route 54, and all but two houses at the entrance are greater than 100 feet from any adjacent property lines; that the internal streets will include concrete, curb and gutter and a closed drainage system, 5 foot wide sidewalk on both sides of the streets; that the road and drainage will be designed to meet the requirements of the Sussex County Engineering Department and will be subject to their review and approval; that a Community Center with a square footage of at least 2000 square feet and a pool with a minimum water surface area of 1000 square feet, 2 pickleball courts will be constructed; that the tax ditch's proposed alignment will relocate the Perch Creek Prong 4 tax ditch and it will connect to Perch Creek Main; that the tax ditch right of ways will be maintained by a CNREC tax ditch section in a meadow like manner; that no structures are proposed within the tax ditch right of ways other than the stormwater outfall pipes, which will be subject to review and approval by DNREC; that the western boundary the project proposes a 30 foot landscape and wooded buffer in areas where one does not already exist; that the. Western boundary line is existing woods which will remain and supplement that existing woods line with a 30 foot landscape buffer to the right away or the permanent easement; that 5.449 acres will be preserved, which represents roughly 65% of the existing woods; that the wooded wetlands will not be impacted and a 30 foot voluntary buffer will be provided around them; that open space provided throughout the site includes amenity areas, existing woods, voluntary landscape and wetlands buffers, tax ditch right of ways and stormwater areas that total roughly 18 acres or 49% of the site; that stormwater management will be provided to meet the requirements of Sussex Conservation District; that the project is in tier one of the Sussex County Unified Sanitary Sewer District and they issued a sewer service concept evaluation to demonstrate capacity and provide a connection point near our entrance for sanitary sewer; that's there's an existing gravity sanitary sewer manhole

in this location at our entrance that will connect to water service which will be provided by Artesian water company and electricity will be provided by Delaware Electric Cooperative.

Mr. David Hutt stated that the change of zone application to the MR medium density residential district is the nature and character of this area and multifamily dwellings are a conditional use within the MR district; that the purpose of a conditional use as it's set forth in the code is to provide items that are of public or semipublic character that are essential and desirable for the general convenience and welfare of the county and then being able to place certain limitations and conditions on those; that the density that's proposed is slightly lower than those neighboring, with 108 units, is 2.89 units per acre; that Americana, Bayside, the density is 3.35 units to the acre and that excludes the apartments and the Americana Melson portion of it, the density of that is 3.67 units to the acre, and Bay Knolls community has a density of 3.87 units to the acre; that there are significant tax ditch right of ways that exist and what is proposed is for them to be a Meadow like that will show on a site plan; that Meadow like conditions have a number of benefits from it being attractive to birds and pollinators, it looks better than a manicured lawn or mowed area; that if done correctly, it can have less maintenance involved on an ongoing basis; that tax ditch right of ways have a limit on the amount of maintenance that is supposed to be going on or within them on a regular basis; that there would be a condominium association for the operation and maintenance of the Community properties and amenities; that what's proposed is that the tax ditch right of ways be maintained in a Meadow like manner consistent with DNREC's requirements for tax ditches and on the eastern, western and southern boundary it would be your typical 30 foot wide perimeter, wooded or landscape buffer.

Ms. Wingate asked if the tax ditches were going to be filled in after the relocation of them and ultimately, it's all going to be tied in that the water will still be flowing without any stoppage?

Mr. Hutt stated that the tax ditch will be moved, filled in and reconnected to the main tax ditch along the southern boundary of the parcel.

Mr. Ken Shoyer, spoke on behalf of himself, in opposition to the application that with 108 homes and 2 two cars per house that's 216 houses dumping out on 54 and if anybody has been there on a weekend during the summer, you can't get out; that the development will kill off the wildlife currently living on that land.

Mr. Hutt stated that if approved the next step is to seek that change through a court order that allows the tax ditch to be moved and that hearing is hybrid being more administrative than an open hearing for the public to attend.

Mr. Mumford stated that to move the tax ditch DNREC has special cross sections that they require for the tax ditch and we will match the tax ditch section that's out there now and meet their requirements with certain side slopes and a bottom width that they have figured out; that it needs to be rerouted along that Eastern property line and have 30 foot on either side from top of bank for maintenance and access, and then it will connect into the southern Main Perch Creek tax ditch and DNREC will review the whole set of plans and will be constructed in a way that all of the

stormwater runoff from the property remains there or is conducted into a ditch somewhere not causing flooding onto the neighbors.

Mr. James Snyder, spoke on behalf of himself in opposition to the application that the developer will cause him to lose land in the front of his property to allow for the proper entrance requirements; that his home and directly across from the proposed entrance and he wants to ensure that the developer takes from their own land to accommodate the widening of Route 54 where needed.

Chairman Wheatley stated that there should never be a plan that shows them encroaching on your property without your permission, they have to buy it from you, typically the developer would purchase an easement or a strip from you.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

In relation to **C/U 2440 Double H Development, LLC**. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5 - 0.

C/U 2518 V&M, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITION A OF ORDINANCE NO. 2853 TO ALLOW FOR A CONVENIENCE STORE WITH FUELING STATIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.98 ACRES, MORE OR LESS. The property is lying on the southeast side of John J. Williams Highway (Rt.24), on the southwest side of Mulberry Knoll Road (S.C.R. 284), and the southeast corner of the intersection of John J. Williams Highway (Rt. 24) and Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A, Rehoboth Beach. Tax Map Parcel: 334-12.00-108.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant's conceptual site plan, a copy of Ordinance #2853 which is C/U 2318, a copy of the staff analysis, a copy of the DelDOT SLER and 1 written letter.

Mr. Zach Crouch, of Davis, Bowen & Friedel, spoke on behalf of the applicant that the application is a revision to condition a of Ordinance 2853, which was approved on May 17th of 2022; that the Planning Commission meeting was held on April 14th of 2022, and they recommended approval with 10 conditions on April 28th of 2022; that they went before County Council on May 17th of 2022, and the same conditions were approved; that we submitted a plan to Planning Commission and received preliminary approval on May 11th, 2023 and then we received final approval for the site plan on June of 22nd, 2023; that on that site plan, there's a convenience store of 5000 square feet and an office building of 12,000 square feet; that we're requesting an amendment to Condition. A, to increase the convenience store from 5000sq feet to 5915sq feet, and to remove the 12,000 square foot office building; that the entrance has been constructed by DelDOT as part of Route 24

improvements and the stormwater management has been built; that we have SCD approval, DelDOT approval and tidewater approval.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

Mr. Robertson read Mr. Collins prepared motion per Mr. Collins request.

Mr. Collins moved the Commission recommend approval of **C/U 2518 V&M, LLC** to amend Condition A of Ordinance No. 2853 regarding a convenience store with fueling stations based upon the record made during the public hearing and for the following:

1. This application seeks an amendment to Condition A of Ordinance No. 2853, which permitted a convenience store with fueling stations and a separate office building. Condition A limited the size of the convenience store to 5,000 square feet and the office building to 12,000 square feet.
2. The existing Conditional Use has received preliminary and final site plan approval.
3. The applicant seeks to delete the office building from the conditional use, but increase the size of the convenience store to 5,915 square feet, or 915 feet more than what is currently permitted under Condition A.
4. Because this is an overall reduction in the intensity of the uses on this property, it is an appropriate amendment to Ordinance No. 2853 and it will lessen any impact of the use on area roadways and nearby properties and uses.
5. For all of these reasons, Condition A of Ordinance No. 2853 should be amended to state, "A. The use shall be for a convenience store that does not exceed 6,000 square feet in size with fueling stations."
6. The Final Site Plan shall be amended to reflect this amendment.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/Z 2008 DTN Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.50 ACRE, MORE OR LESS. The property is lying on the east side of Muddy Neck Road (S.C.R. 361), at the intersection of Muddy Neck Road (S.C.R. 361) and Butler Boulevard, approximately 200 feet north of Parker House Road (S.C.R. 362). 911 Address: 37985 Muddy Neck Road, Ocean View. Tax Map Parcel: 134-17.00-6.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant's survey and conceptual site plan, a copy of the applicants exhibit booklet, a copy of the staff analysis, a copy of the DelDOT SLER and 2 written comments.

Ms. Mackenzie Peet, of Saul Ewing, spoke on behalf of the applicant that there is 541 letters of support to be submitted into the record; that this a request to rezone 1/2 acre property designated as tax parcel 134-17.00-6.00 from AR-1 to B-2; that the property is located on the east side of Muddy Neck Rd. at the intersection of Muddy Neck Rd. and Butler Blvd. just outside the town of Ocean View less than a mile from the intersection of Atlantic Ave., Route 26 and West Ave. where there is a royal farms CVS, other retail commercial office, restaurant related use; that DTN purchased the property in 2019, as evidenced by the deed included in the exhibit page and has operated as a produce market specifically since 1968; that the family has continued to operate the market at the site since their purchase in 2019, and they have a couple of satellite vendor stands, one location on Route 26 and one at Middlesex Beach; that the business currently operates seasonally from approximately end of May, early June until mid-September with approximately 15 employees, hours are seven to seven Monday through Sunday and the market has been classified by Planning and Zoning historically as a non-conforming use or grandfathered in; that the Planning and Zoning office was only concerned that produce was just sold when they grandfathered the lot in, which is limiting; that to expand its offerings and bring the current use into compliance with the zoning district that's more applicable to the use that's actually occurring, DTN seeks to rezone the property from AR-1 to B-2; that the proposed expansion includes the addition of meats, cheeses, seafood, baked goods, etc., as well as ice, none of which are permitted to be sold currently; that this would be more of a vendor stand and/or convenience store type use, both of which are permitted in B-2; that the property is zoned AR-1 and other properties in the same vicinity as well; that 40 are zoned MRPC, GR, HR and B-1; that the property is located near residential communities such as Summerfield, Savannahs Landing, Hunters Run and Bridle Ridge Estates; that the purpose of the B-2 district is to provide primarily for office, retail shopping, personal service uses to be developed either as a unit or on an individual parcel to serve the needs of a relatively small area, primarily near rural low density or medium density residential neighborhoods to enhance the general character of the district and its compatibility with its residential surroundings; that the rezoning would enhance the general character of the area and allow for the expansion of the markets offerings, especially because the surrounding residential communities would benefit from the convenience of having a local market that offers more than just produce and the rezoning would allow for an expansion of the existing use that aligns with and complements the existing residential uses as well as nearby commercial and retail use; that the proposed use is consistent with the comprehensive plan and future land use MAP designation of coastal area as a designated growth area; that the adjoining parcels to the South and East are also located within the coastal area, with the remaining adjacent parcels on the North side of the parcel within the municipal boundary of the town of Ocean View; that the availability of sewer connectivity aligns with the planned suggestion for development in areas where central water and sewer are available; that the property is located within investment Level 2 near properties designated the same, as well as Level 1; that areas subject to the rezoning of the property, the applicant would undertake a thorough site plan review and approval process and assure that necessary measures are taken to address any potential impacts to nearby neighbors; that proposed is a permanent building and parking area with connection to public water and sewer, as all structures on site are temporary currently; that the development and vitality that the proposed

rezoning will contribute to the community will enhance the character of the area and serve Sussex County residents and visitors who would benefit from the convenience of locally sourced products and beyond.

Ms. Wingate asked about the parking and does the applicant plan to expand the amount of parking as there is very little there currently.

Mr. Collins asked about the concerns from neighbors about the cleanliness of the site and the use of privacy fencing or vegetative buffers.

Ms. Peet explained that parking would be part of the final site plan and would meet all requirements that are needed and improve the property, get rid of the temporary structures, clean up the site; that they've already cleaned up the produce market and to put a permanent structure up and have everything inside with sufficient parking.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

In relation to **C/Z 2008 DTN Properties, LLC**. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5 - 0.

C/Z 2009 Double H Development, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 37.52 ACRES, MORE OR LESS. The property is lying on the southeast side of Lighthouse Road (Rt. 54) approximately 0.50-mile northeast of Williamsville Road (S.C.R. 395). 911 Address: 35090 Lighthouse Road, Selbyville. Tax Map Parcel: 533-19.00-47.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant's conceptual rezoning plan, a copy of the applicants exhibit booklet, a copy of the applicant's environmental assessments and public facilities evaluation report, a copy of the proposed restrictive covenants for the property, a copy of the memo relating to drainage assessments, a copy of the staff analysis, a copy of the plus comments, a copy of the applicant's response to the plus comments from the State Planning Office, a copy of the DelDOT SLER, we have comments from the Technical Advisory Committee, including comments from the division of Watershed Stewardship, a copy of a letter from the US Department of Agriculture, a copy of the letter received from the Sussex County Engineering Department, a copy of a letter received from the Delaware Forest Service, comments from Delaware Electric Co-op and Delmarva Power and there are 7 comments.

Mr. David Hutt. Esq., spoke on behalf of the applicant in relation to the property totals 37.5 acres and as was indicated, are two applications, a change of zone application seeking to change the designation of that property on the county zoning map from agricultural residential district to the

medium density residential district and the second application is a multifamily conditional use application and that seeks to have 108 single family homes in a multifamily use, which is a condominium style single family home project; that the 2020 state strategies maps that are promulgated by the Office of State Planning Coordination has the property centered on the image and is primarily within a Level 3 area; that the Office of State Planning Coordination says that development and growth may be appropriate in the near term in a Level 3 area; that the resources on the site and in the surrounding area should be carefully considered and accommodated; that there are public water and public sewer available and this area has developed and it is continuing to develop; that this is an appropriate area under the state strategies, but the Planning Commission often looks to 2045 future land use map that's contained within the 2018 update to the Sussex County Comprehensive Plan; that the comprehensive plan states that coastal areas are areas that can accommodate development provided special environmental concerns are addressed, a range of housing types should be permitted in coastal areas, including single family homes, this application certainly would meet that stated permitted purpose; that there is a wide range of various zoning classifications that exist along this area of Route 54; that in addition to all those various zoning classifications, the Counties Staff Memo identified 29 conditional uses within a one mile radius of this site.

Mr. Cliff Mumford an engineer with Davis, Bowen & Friedel spoke on behalf of the applicant that the property has frontage along Lighthouse Road to the north, Route 54, the majority of the Eastern property line is defined by the. Drum Creek Prong 4 tap Stitch, after the ditch turns, the property line continues to the center of the Drum Creek tax ditch; that this ditch defines the southern property boundary along with Americana Bayside; that the western boundary follows the edge of the woods line and runs adjacent with Americana Bayside Melson and there is a right away with Lighthouse Road that completes the loop around the property boundary; that there are approximately 8.259 acres of existing woods with the hatched area inside the woods that are the wetlands that were delineated by Tom Noble; that those wetlands are not classified as resources as defined by Sussex County Code because they are not contiguous to tidal waters or wetlands, and they do not include a surface water connection to adjacent wetlands; that there's some AG ditches that run across the property to the main Prong 4 tax ditch, but there's no pipe connection or ditch connection; that there's a farm route that runs along here that separates the wetlands from the tax ditch; that the property is impacted by two generic tax ditches, Perch Creek Maine and Perch Creek Prong 4, Perch Creek Main runs with Americana Bayside includes at 80 foot right from the top of bank of the ditch, Perch Creek Main will not be impacted by this development; that Perch Creek Prong 4 runs from Lighthouse Rd. down the eastern boundary line with the Toll Brothers property, roughly 12,150 feet and then turns and cuts through the property; that as part of the development we plan to realign Prong 4 to run parallel with that boundary line with the Toll Brothers until it connects with Perch Creek Main, near the southeastern property corner; that the center line of the ditch will be offset from our property line to not impact the neighboring property and would be wholly contained on our site along with the tax ditch right of way; that a court order change will be required to be filed with DNREC to relocate the tax ditch; that the proposed neighborhood will have an entrance on Lighthouse Rd. (Route 54), which is classified as a major collector by DelDOT; that Lighthouse Rd. includes 12 foot travel lanes and eight foot shoulders, which meets DelDOT standards for a major collector; that the entrance has been sighted to align with New Road which intersects Lighthouse Road from the North; that left and right turn lanes will be provided

into the site along with a left turn lane onto New Road based on DelDOT's requirements; that regarding our due diligence with DelDOT, we have submitted an SLER to which they responded that the development site traffic would have a minor impact on area roadways and the project is eligible to pay an area wide study fee in lieu of performing a TIS; that at the entrance, a 10 foot wide shared use path will be along the property frontage; that the closest house will be 70 feet from the right of way of Route 54, and all but two houses at the entrance are greater than 100 feet from any adjacent property lines; that the internal streets will include concrete, curb and gutter and a closed drainage system, 5 foot wide sidewalk on both sides of the streets; that the road and drainage will be designed to meet the requirements of the Sussex County Engineering Department and will be subject to their review and approval; that a Community Center with a square footage of at least 2000 square feet and a pool with a minimum water surface area of 1000 square feet, 2 pickleball courts will be constructed; that the tax ditch's proposed alignment will relocate the Perch Creek Prong 4 tax ditch and it will connect to Perch Creek Main; that the tax ditch right of ways will be maintained by a DNREC tax ditch section in a meadow like manner; that no structures are proposed within the tax ditch right of ways other than the stormwater outfall pipes, which will be subject to review and approval by DNREC; that the western boundary the project proposes a 30 foot landscape and wooded buffer in areas where one does not already exist; that the. Western boundary line is existing woods which will remain and supplement that existing woods line with a 30 foot landscape buffer to the right away or the permanent easement; that 5.449 acres will be preserved, which represents roughly 65% of the existing woods; that the wooded wetlands will not be impacted and a 30 foot voluntary buffer will be provided around them; that open space provided throughout the site includes amenity areas, existing woods, voluntary landscape and wetlands buffers, tax ditch right of ways and stormwater areas that total roughly 18 acres or 49% of the site; that stormwater management will be provided to meet the requirements of Sussex Conservation District; that the project is in tier one of the Sussex County Unified Sanitary Sewer District and they issued a sewer service concept evaluation to demonstrate capacity and provide a connection point near our entrance for sanitary sewer; that's there's an existing gravity sanitary sewer manhole in this location at our entrance that will connect to water service which will be provided by Artesian water company and electricity will be provided by Delaware Electric Cooperative.

Mr. David Hutt stated that the change of zone application to the MR medium density residential district is the nature and character of this area and multifamily dwellings are a conditional use within the MR district; that the purpose of a conditional use as it's set forth in the code is to provide items that are of public or semipublic character that are essential and desirable for the general convenience and welfare of the county and then being able to place certain limitations and conditions on those; that the density that's proposed is slightly lower than those neighboring, with 108 units, is 2.89 units per acre; that Americana, Bayside, the density is 3.35 units to the acre and that excludes the apartments and the Americana Melson portion of it, the density of that is 3.67 units to the acre, and Bay Knolls community has a density of 3.87 units to the acre; that there are significant tax ditch right of ways that exist and what is proposed is for them to be a Meadow like that will show on a site plan; that Meadow like conditions have a number of benefits from it being attractive to birds and pollinators, it looks better than a manicured lawn or mowed area; that if done correctly, it can have less maintenance involved on an ongoing basis; that tax ditch right of ways have a limit on the amount of maintenance that is supposed to be going on or within them on a regular basis; that there would be a condominium association for the operation and

maintenance of the Community properties and amenities; that what's proposed is that the tax ditch right of ways be maintained in a Meadow like manner consistent with DNREC's requirements for tax ditches and on the eastern, western and southern boundary it would be your typical 30 foot wide perimeter, wooded or landscape buffer.

Ms. Wingate asked if the tax ditches were going to be filled in after the relocation of them and ultimately, it's all going to be tied in that the water will still be flowing without any stoppage?

Mr. Hutt stated that the tax ditch will be moved, filled in and reconnected to the main tax ditch along the southern boundary of the parcel.

Mr. Ken Shoyer, spoke on behalf of himself, in opposition to the application that with 108 homes and 2 two cars per house that's 216 houses dumping out on 54 and if anybody has been there on a weekend during the summer, you can't get out; that the development will kill off the wildlife currently living on that land.

Mr. Hutt stated that if approved the next step is to seek that change through a court order that allows the tax ditch to be moved and that hearing is hybrid being more administrative than an open hearing for the public to attend.

Mr. Mumford stated that to move the tax ditch DNREC has special cross sections that they require for the tax ditch and we will match the tax ditch section that's out there now and meet their requirements with certain side slopes and a bottom width that they have figured out; that it needs to be rerouted along that Eastern property line and have 30 foot on either side from top of bank for maintenance and access, and then it will connect into the southern Main Perch Creek tax ditch and DNREC will review the whole set of plans and will be constructed in a way that all of the stormwater runoff from the property remains there or is conducted into a ditch somewhere not causing flooding onto the neighbors.

Mr. James Snyder, spoke on behalf of himself in opposition to the application that the developer will cause him to lose land in the front of his property to allow for the proper entrance requirements; that his home and directly across from the proposed entrance and he wants to ensure that the developer takes from their own land to accommodate the widening of Route 54 where needed.

Chairman Wheatley stated that there should never be a plan that shows them encroaching on your property without your permission, they have to buy it from you, typically the developer would purchase an easement or a strip from you.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

In relation to **C/Z 2009 Double H Development, LLC**. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5 - 0.

Meeting adjourned at 5:25 p.m.

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internet at www.sussexcountycle.gov.**
